

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:22-CR-21
(KLEEH)

RANDALL RICHARD STEBBINS,

Defendant.

RANDALL RICHARD STEBBINS,

Petitioner,

v.

CIVIL NO. 1:24-CV-34
(KLEEH)

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING AND
DISMISSING PETITION UNDER 28 U.S.C. § 2255**

On April 1, 2024, the pro se petitioner, Randall Richard Stebbins ("Petitioner") filed a pro se motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. See ECF No. 58 in 1:22-CR-21 and ECF No. 1 in 1:24-CV-34. On September 11, 2024, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court deny and dismiss the petition with prejudice. See ECF No. 76 in 1:22-CR-21 and ECF No. 3 in 1:24-CV-34.

The R&R informed Petitioner that he had fourteen (14) days

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from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned him that the "[f]ailure to file written objections . . . shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Plaintiff accepted service of the R&R on September 17, 2024. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review *de novo* only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a *de novo* review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 76 in 1:22-CR-21 and ECF No. 3 in 1:24-CV-34] and further **ORDERS** as follows:

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- Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is **DENIED** and **DISMISSED** with prejudice [ECF No. 58 in 1:22-CR-21 and ECF No. 1 in 1:24-CV-34];
- Case No. 1:24-CV-34 is **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket; and
- The Clerk **SHALL** enter a separate judgment order in favor of the United States in 1:24-CV-34.

Pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings, the district court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." "If the Court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Id. The Court finds it inappropriate to issue a certificate of appealability in this matter because Petitioner has not made a "substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). The Court, therefore, **DENIES** issuing a certificate of appealability.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via email and to Petitioner via certified mail, return receipt requested.

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DATED: October 7, 2024

Tom S. Kline

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA